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The Director of Central Intelligence
Washington, D.C 20505

Critical Intelligence Problems Committee

DCI/ICS 83-3897
November 8, 1983

MEMORANDUM FOR: Critical Intelligence Problems Committee Members and
Observers

FROM:

[redacted]
Vice Chairman

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SUBJECT: CIPC Narcotics Study [redacted]

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1. At the 11 October 1983 meeting of the CIPC, there was general support among the members for the report prepared by the CIPC Narcotics Working Group entitled: The International Narcotics Coordination and Collection Study. The NSA member, [redacted] stated that NSA required additional time to review the report and submit formal comments. These comments have now been received from NSA. We have also received oral suggestions from DEA. The resulting proposed changes to the report are shown in line-in, line-out format at Tab A. [redacted]

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2. Also at the 11 October meeting, reference was made to the fact that, as an adjunct to the CIPC Narcotics Working Group, a separate interagency panel had been established to recommend policies for the Intelligence Community that will enhance the flow of intelligence concerning narcotics to designated law enforcement agencies, while protecting the security of intelligence sources and methods. It was our intent that the work of that panel be completed in time for consideration at the 15 November 1983 CIPC principals' meeting. Unfortunately, despite an intense level of effort, it has not been possible for the panel to meet that deadline. Provided at Tab B for your information is an interim report from the Chairman, Panel on Security Considerations. [redacted]

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Secret when separated from attachment.

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3. During the deliberations of the Panel on Security Considerations, it became increasingly apparent to the members that many of the security policy issues being discussed had significant legal implications. At the same time, partially as a result of issues raised by the Panel, we understand that there have been discussions among some Community General Counsels and with representatives of the Justice Department with respect to narcotics-related legal matters. Questions such as how best to protect intelligence sources and methods when intelligence data has been a contributor to a criminal prosecution quite clearly require careful legal attention in support of policy decisions. It seems equally clear that these types of legal deliberations will not reasonably be completed in the near future. []

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4. There is a pressing requirement to move ahead with CIPC final review and approval of The International Narcotics Coordination and Collection Study. This need is predicated in large measure on the need to use this study as a major input to a request by the Senate Select Committee on Intelligence (SSCI) in its classified report on the FY 1984 budget. The SSCI requested that the Intelligence Community report by 31 December 1983 on a number of actions related to narcotics, to include a comprehensive collection and analysis plan to guide the development of additional capabilities needed in FY 1985 and beyond to support drug control objectives of the US. (Further details concerning this SSCI request are at Tab C.) []

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5. Based on the foregoing discussion, it is recommended that the CIPC members take the following actions at the 15 November meeting:

- a. Approve for forwarding to the DCI the CIPC Narcotics Working Group report entitled The International Narcotics Coordination and Collection Study. The changes contained at Tab A will be discussed at the November 15 CIPC meeting.
- b. Note the interim report of the Chairman, Panel on Security Considerations (Tab B) and request that that Panel continue its deliberations with the objective of providing a final report to the CIPC at its first meeting after 1 January 1984.
- c. Request the CIA General Counsel to convene a legal panel with representatives, as appropriate, from the intelligence and law enforcement communities to address such issues as:
 - reviewing existing procedures relating to possible disclosure of sensitive source/method information in criminal narcotics prosecutions or other legal proceedings and, where required, initiating action to improve these procedures;

-2-

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- considering whether or not existing laws and Executive Branch directives pertaining to foreign narcotics collection by the Intelligence Community provide an adequate basis for action on the part of the Community, and making recommendations for amendment as appropriate;

and report results to the CIPC by 1 March 1984.

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- 3 -

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DCI/ICS 83-3894
8 November 1983

MEMORANDUM FOR: Vice Chairman, Critical Intelligence Problems Committee
Chairman, Narcotics Working Group

FROM: Chairman, Panel on Security Considerations

SUBJECT: Status Report

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1. In accordance with its Terms of Reference (attached, with listing of Panel members) this Panel has met seven times over the past two months to consider security matters involved in the provision of classified intelligence to drug law enforcement agencies. Five draft reports have been produced and much work has been done, but the subject has proven complex and it has not been possible to reach full agreement on all aspects of this subject in time for consideration at the 15 November CIPC meeting. This memorandum will summarize for you the state of the Panel's deliberations. Where major differences exist among the various members, I have attempted to recap their positions; however, time has not permitted this memo to be coordinated with the members themselves.

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2. The Panel agrees that certain risks do exist with respect to the provisions of classified foreign intelligence to the drug law enforcement agencies. Among them are:

- Secure communications and ADP support within the law enforcement community are generally not adequate. Representatives of the Drug Enforcement Agency, the Customs Service, and the Coast Guard acknowledge this deficiency to varying degrees. All have programmed major upgrades and the Panel is agreed that the Intelligence Community should support those improvements.
- Law enforcement agencies may not be classifying all information in their possession which meets the criteria for classification set forth in Executive Order 12356, i.e., information the unauthorized disclosure of which would damage national security. For example, information which an enforcement agency collects independently may indeed affect national security but be handled under internal

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administrative procedures to protect privileged information--procedures which may be less stringent than those required for classified information. This situation is especially disturbing if the information in question happens to be collected by sources and methods which the foreign intelligence community itself uses, e.g., communications monitoring. Considering that those collection capabilities are frequently built and operated with the training and assistance of the Intelligence Community, or employ former intelligence officers whose skills were developed in the Intelligence Community, the Panel is concerned that a compromise of such information could provide a hostile intelligence service valuable insight into comparable foreign intelligence sources and methods. Moreover, as illegal drug operations become more sophisticated--and considering the money available to them that is a reasonable expectation--collection operations and analytic functions will likewise have to become more sophisticated. As the complexity of the target increases, the consequences of compromising intelligence sources and methods will also increase. The Panel is largely agreed that this matter needs further attention although the SIGINT Committee representatives point out that the DCI approved definition of COMINT contained in the SISR, Part I, specifically excludes law enforcement operations.

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- There are continuing questions with respect to the basic authority and responsibility of law enforcement agencies to classify drug enforcement information. GSA's Information Security Oversight Office (ISOO), the element charged by Executive Order 12356 to oversee operations of the Classified Information System, recently stated that "wholly drug enforcement information" was not classifiable because it does not affect foreign policy or national security. The unfortunate impact of that ruling may be to "chill" recent law enforcement community's efforts to tighten security.

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Not all of the Panel sees this as a problem worth addressing. The NSA and OGC representatives regard the matter as moot because ISOO has since been persuaded that the information in question was obtained through classified techniques taught the Coast Guard by NSA, and was therefore classifiable. The representative of the Office of the Vice President, however, sees this as a major issue. He would have the DCI employ his statutory authorities to protect intelligence sources and methods to advise ISOO of an authoritative "finding" that information indirectly derived from intelligence collection techniques is classifiable. Most other members of the Panel agree that the problem should be addressed but are uncertain of the solution.

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- In the legal area, the security of foreign intelligence is jeopardized by a defendant's rights of discovery, i.e., his right to see information in the Government's possession relevant to his defense. Safeguards exist to prevent public disclosure of classified information which falls in that category, but those safeguards are not foolproof. The fact is, once introduced as courtroom evidence, ultimate control of that intelligence is relinquished to the judicial system. [REDACTED]

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3. The Panel has considered numerous options to alleviate the above issues, some of which have already been mentioned. Others are categorized as follows:

- Secure higher level guidance. Several Panel members believe that the Intelligence Community should seek a statement of White House views, e.g., a National Security Decision Directive, a new Executive Order, or a Presidential letter. Although this guidance document would presumably address the narcotics problem in general, any statement of concern from the President would lend considerable support to security-related initiatives, such as the funding of programs to upgrade secure communication or ADP by law enforcement agencies. It could also clarify questions about whether drug-related intelligence is classifiable. [REDACTED]

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The NSA and OVP representatives have been the most vocal proponents of such initiatives. They argue that the Intelligence Community needs such endorsement if it is to deal effectively with the other elements of this situation. Other Panel members however see such documents of ephemeral benefit and as difficult to staff. [REDACTED]

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- Convey Intelligence Community concerns to cognizant Cabinet level officers. At issue here are (1) a proposal that the DCI send letters to the Secretaries of Transportation and Treasury and the Attorney General, advising of Intelligence Community security concerns and offering assistance in resolving them, and (2) a proposal that the DCI dispatch a letter to the various elements of the law enforcement community supported by foreign intelligence advising of dangers to sources and methods, pointing out that such intelligence should only be used with prior consent and only as a lead to develop alternative evidence. [REDACTED]

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The Panel is divided on the question of whether such letters are necessary or whether lower level staff actions are more appropriate. [REDACTED]

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- The DCI should issue overall guidance for Intelligence Community support to law enforcement and encourage Community members to conclude Memoranda of Understanding (MOU) with the law enforcement agencies they support, detailing their particular arrangements. The guidance would outline such matters as the need for sanitization, administrative control, prior consent for use as evidence, assurance of physical security, whatever legal guidance might come out of the Intelligence Community--Department of Justice consultations that were alluded to earlier, etc. [REDACTED]

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There appears to be a consensus among the Panel that such guidance would be useful, although some argue it already exists in published documents. (The SIGINT Committee representatives would, in fact, extend that argument to most other issues as well.) As for the MOU, NSA and CIA are in the process of negotiating MOUs with one or more law enforcement elements. [REDACTED]

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4. Although the Panel remains divided on a number of particulars, it has agreed on several general conclusions:

- There is no evident reason why the Intelligence Community ought to stop or slow its support to the law enforcement community. The risks presently entailed appear to be acceptable. Indeed, there are encouraging developments such as law enforcement programs for upgrading communications and computer security which speak well for expanding current levels of support. [REDACTED]
- Efforts to expand intelligence support will require patience and determination. The legal problems involved are complex and will require time to resolve. Problems involving security practices and procedure are likewise complex and rooted in basic differences between the perspectives of the intelligence and law enforcement communities. The former is heavily concerned with the protection of sources and methods, the latter with successful prosecutions of drug law violators. Reconciling these two sometimes conflicting points of view will require time and determination on the part of both parties. [REDACTED]

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- In general, Intelligence Community efforts to drug law enforcement should be guided, inter alia, by (1) the expectation that its efforts may well be subjected to scrutiny by the courts, and (2) recognition that a major security compromise could produce a backlash against foreign intelligence support to law enforcement.

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5. In sum, the Panel has proven productive in several respects. It has surfaced and illuminated a number of issues. It has aired differences among the Community on those issues, and it has resolved some of those differences. I do not expect that the Panel will be able ultimately to resolve all such differences, but I do believe it can produce a set of recommendations on which the Community can proceed in general agreement.

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Attachments:
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SUBJECT: Status Report

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Distribution: DCI/ICS 83-3894

1 - VC/CIPC

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DCI/ICS/CIPC,

(8 November 1983)

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DCI/ICS 83-3858
19 September 1983

TERMS OF REFERENCE

CIPC Narcotics Working Group's

Panel on the Use of Classified Intelligence Information by Drug Enforcement Agencies

1. Background:

The production, trafficking, and abuse of drugs have become problems of national proportions. The Vice President has called for the full cooperation and coordination of US departments and agencies in supporting the US drug interdiction program. Increasingly the resources of the Intelligence Community are being called upon to assist US law enforcement efforts. The Director of Central Intelligence has convened a working group under the auspices of the Critical Intelligence Problems Committee (CIPC) to consider the adequacy of intelligence support to US international narcotics control efforts. Throughout the working group's deliberations, questions have recurred regarding the constraints which classification may impose on the effective utilization of intelligence by drug enforcement agencies. In general the problem is how to maximize dissemination to and use of intelligence by law enforcement agencies while maintaining appropriate security standards for that intelligence. The complexity of that problem in the drug enforcement context has dictated that a separate panel--this panel--be established to focus on it exclusively.

2. Mission:

- A. This Panel will recommend policies for the Intelligence Community that will enhance the flow of intelligence concerning narcotics to designated US law enforcement agencies for the purposes of interdiction and prosecution while maintaining the security of that information and the protection of intelligence sources and methods.
- B. The Panel will focus on three aspects of that overall mission:
 - Security standards used by drug enforcement agencies.
 - Protection of sources and methods against indirect compromise.
 - Use of intelligence and intelligence-derived information in preparing for trial.

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3. Security Standards:

- A. The first aspect of this problem arises with respect to the quality of physical and personnel security standards required to protect classified intelligence information, as opposed to those required for privileged (but unclassified) information held by law enforcement agencies. Standards observed by the Intelligence Community are much more stringent. Law enforcement agencies appear to be reluctant to accept the greater burden which the standards for classified material involve, and have resisted pressures to observe them. Hence, agencies in the Intelligence Community are concerned that material they provide law enforcement agencies may not be adequately protected.
- B. A corollary concern is that information developed by law enforcement agencies is not being classified at all. E.O. 12356 allows information to be classified only if its unauthorized disclosure "could reasonably be expected to cause damage to our national defense or foreign relations." On that basis privileged information developed by law enforcement agencies, such as that obtained from informants, has heretofore not been classified. Its confidentiality has been protected by administrative procedure and evidentiary privilege. Now, however, law enforcement agencies are beginning to develop information through established intelligence means, which may have implications for national security. Also they are producing increasing amounts of information derived from classified material provided them directly by national intelligence elements. A question has therefore arisen as to whether such "derivative intelligence," i.e., derived through either established intelligence methods or from original intelligence sources, should be interpreted to meet E.O. 12356 classification standards.

4. Protection Against:

- A. This second issue applies in both HUMINT and SIGINT. In HUMINT it stems from concern that sources may be divulged by law enforcement agencies aggressively pursuing leads provided by US intelligence.

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- B. In SIGINT, the concern is that law enforcement agencies are developing collection programs which use established national intelligence collection techniques.

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5. Use of Intelligence in Trials:

- A. The third aspect of the problem stems from federal criminal procedures which enable a defendant to seek through a discovery motion relevant information regarding any evidence presented by the prosecution. A GAO report to the Congress on Federal Drug Interdiction Efforts (GAO/GGD-83-52, June 13, 1983) offers the following example:

" . . . if a secret military system were used to detect an aircraft which culminated in the arrest of the pilot for drug trafficking, the defendant might be able to show a need to know that he was detected by the military system. Depending on the case, there was concern that a judge could require disclosure of the technical specifications of the system that resulted in the detection. This concern is expressed in view of the principle that the judiciary controls the evidence in a criminal trial and on the possibility that a defendant could successfully demonstrate a need for such evidence."

- B. The same report goes on to explain that classified information is provided certain protections:

" . . . Congress has addressed these concerns involving cases where national security secrets are likely to arise in the course of criminal prosecutions. On October 15, 1980, Congress passed Public Law 95-456, the Classified Information Procedures Act. This law provides certain pretrial, trial, and appellate procedures for criminal cases involving classified information. For example, it provides pretrial procedures that permit a trial judge to rule on questions of admissibility involving classified information before introduction of the evidence in open court. The purpose of this particular procedure is to permit the Government to ascertain before trial the potential damage to national security. Under this procedure, the judge determines whether and the manner in which the information in issue may be used in a trial or pretrial proceeding."

The Classified Information Procedures Act therefore reduces the jeopardy to classified material in judicial proceeding. The Act does not, however, alter the final possibility that classified material may indeed be essential to the defendant's case. If so, the Government will be faced with deciding whether to present the evidence in court, proceed without the evidence, or drop the prosecution altogether.

6. Objectives:

- A. Recommend appropriate policies to govern the security of classified narcotics intelligence information while enhancing the use of that information to support the US drug enforcement program.
- B. Recommend procedures to minimize the possibility of indirect compromise of sources and methods thru narcotics intelligence provided to drug enforcement agencies.

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- C. Recommend intelligence support processes for drug enforcement that will enable drug agencies to develop evidence independently and reduce the likelihood that intelligence sources and methods will be regarded essential to a criminal defendant's case; in effect, build a firebreak in the evidentiary trial leading to sources and methods.

7. Study Tasks:

- Examine Community procedures for the dissemination of narcotics intelligence to law enforcement agencies.
- Examine Community requirements for the security of narcotics intelligence information, including physical, personnel, and document security.
- Examine the ability of the law enforcement community to protect intelligence in accordance with Intelligence Community requirements.
- Examine law enforcement needs and determine whether Community security requirements inhibit the ability to respond fully.
- Determine appropriate policies and procedures on dissemination and security of intelligence.
- Determine the need for restrictions on use of intelligence information, sources, and methods at the analytical, investigatory, interdiction and prosecutorial stages.
- Determine how drug agencies can establish independent evidence to build a "firebreak" to protect intelligence equities at the trial stage.

8. Additional Tasks:

- Review and, as appropriate, advise on:
 - Use of classification to protect law enforcement equities.
 - Need for explicit classification authority by drug agencies.
 - Extent to which revelation of law enforcement sources and methods can jeopardize intelligence sources and methods.
 - Extent to which uniform procedures are needed within the Intelligence Community to govern provision of information to the drug enforcement agencies.

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9. Meetings:

This panel will assemble each Friday morning at 1000 hours, or more frequently as required.

10. Report Schedule:

An interim report is due to the Narcotics Working Group by 21 September.
A final report to the CIPC will be due 17 October.

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